

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NEW ENGLAND CENTRAL
RAILROAD, INC.,

Plaintiff,

-v.-

Civil Action No. 04-30235-MAP

SPRINGFIELD TERMINAL
RAILWAY COMPANY, et al.,

Defendants.

**UNOPPOSED MOTION FOR PERMISSION
TO DESIGNATE EXPERT WITNESS OUT OF TIME**

The defendants/counterclaimants, Springfield Terminal Railway Company and Boston and Maine Corporation (collectively, "ST/BM"), who are the defendants/counterclaimants herein, move, pursuant to Fed. R. Civ. P. 16(b), Loc. R. 16.1(g), and ¶ 1 of this Court's pretrial scheduling order of February 6, 2007 [Dkt. #54], for an order permitting ST/BM to designate Mr. Roger Bergeron, an employee of ST/BM, as an expert witness for ST/BM. Mr. Bergeron previously has been designated, and his deposition taken, as a non-expert witness for ST/BM.

It is ST/BM's position that because Mr. Bergeron is an employee of ST/BM whose duties as such do not regularly involve giving expert testimony, no expert report from him is required by Rule 26(a)(2) of the Federal Rules of Civil Procedure. It is the position of the New England Central Railroad, Inc. ("NECR"), which is the plaintiff/counterdefendant herein, that the report and other disclosures required by Rule 26 are required. ST/BM have advised NECR of their

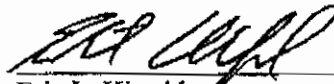
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willingness to make Mr. Bergeron available for a further deposition, should the Court permit his designation as an expert.

Mr. Michael Flynn, counsel for NECR, has advised counsel for ST/BM that NECR does not object to this motion regarding the timeliness of the proposed designation but that NECR reserves its rights to depose Mr. Bergeron (which ST/BM has agreed to if this motion is allowed), to propound one or more rebuttal expert witnesses, to take the position that Mr. Bergeron is required to provide an expert report, and to object to Mr. Bergeron's proposed testimony on all grounds other than timeliness.

ST/BM believe, as set out more fully in the accompanying documents, that there is good cause for this late designation.

Respectfully submitted,



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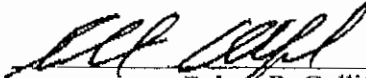
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*Attorneys for Defendants/Counterclaimants
Springfield Terminal Railway Company
and Boston and Maine Corporation*

February 16, 2007

CERTIFICATE OF SERVICE

I hereby certify that service of this motion and the accompanying papers will be made on counsel for NECR, the plaintiff/counterdefendant, by means of the Court's electronic filing system.


Robert B. Culliford